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The right to food

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur of the Commission on Human Rights on the right to food, Jean Ziegler, in accordance with General Assembly resolution 59/202.

* A/60/150.
** This report is submitted late in order to contain as much updated information as possible.

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Summary

The Special Rapporteur hereby submits his fifth report to the General Assembly. He is gravely concerned that, after reporting last year to the General Assembly that hunger increased in 2003 to 842 million undernourished people across the world, he now has to report that global hunger again has increased in 2004, to 852 million undernourished women, children and men. He is gravely concerned by the situation of food crisis across Africa, detailing his visit to Niger in July 2005 in this report, and calls on Member States to act quickly to respond to food crises not only in Niger, but in all the affected states, and to take action to eradicate chronic undernourishment in all countries.

All human beings have the right to live in dignity, free from hunger. In a world that is richer than ever before, hunger and famine are not inevitable. They are a violation of human rights.

In the present report, he addresses two emerging issues that are affecting the right to food.

The first is the issue of the right to food of indigenous peoples. In most countries, hunger and malnutrition are disproportionately higher among indigenous than non-indigenous populations. It is therefore urgent to strengthen the protection of the right to food of indigenous peoples, including by improving the protection of their lands and resources. Governments have the obligation to respect, protect and fulfil the right to food of indigenous peoples and must not tolerate discrimination against them.

The second issue relates to the responsibilities of international organizations in regard to the right to food. The Special Rapporteur is concerned that projects financed by international organizations such as the World Bank can have a negative impact on the right to food of vulnerable populations, sometimes causing them to be displaced from their land and to lose access to their traditional lands and livelihoods. He is also concerned that the economic models of development currently promoted and imposed by international organizations such as the World Bank, the International Monetary Fund and the World Trade Organization are threatening the right to food of small farmers across the world. It is time that the right to food is respected in economic adjustment and trade liberalization measures to ensure that the poorest and most vulnerable communities are not left in even greater poverty and hunger. International organizations have human rights obligations to respect, protect and support the fulfilment of the right to food.

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I. Introduction

1. The Special Rapporteur has the honour to submit his fifth report to the General Assembly, as requested by the General Assembly in resolution 59/202 and the Commission on Human Rights in resolution 2005/18.

2. Despite the promise made by Member States to halve hunger in accordance with the Millennium Development Goals, the shocking news is that globally, hunger is continuing to increase. The Food and Agriculture Organization of the United Nations (FAO), in *The State of Food Insecurity in the World 2004*, reports that hunger has increased in 2004 to 852 million of people gravely undernourished children, women and men, up by 10 millions since 2003. Although important recent progress has been made in some countries, the overall trend is one of regression, rather than the progressive realization of the right to food. In fact, it appears that hunger has increased every year since the World Food Summit in 1996.

3. The situation in Africa is particularly disturbing. At the time of writing of the present report, Niger, the Sudan, Somalia, Chad, Zimbabwe, Mauritania and Ethiopia were suffering from critical food emergencies.[1] Mali and Burkina Faso were also affected. A new study by the well-respected International Food Policy Research Institute (IFPRI) found that chronic food insecurity in Africa has increased substantially since 1970, with the number of malnourished people in sub-Saharan Africa soaring from 88 million to 200 million in 1999-2001. The study also concluded that if investments were increased in water-harvesting technologies, agricultural extension, education and HIV/AIDS prevention and treatment, the percentage of malnourished children in Africa could come close to meeting the proposed Millennium Development Goal target by 2015.[2] It is possible to reduce hunger, but only if there is serious investment to address the underlying chronic malnutrition and pervasive poverty.

4. Chronic undernourishment persists in many countries around the world. Guatemala, which the Special Rapporteur visited this year, has suffered from an increase in cases of acute malnutrition as localized droughts and the collapse of international coffee prices exacerbated pervasive food insecurity. Guatemala has one of the highest levels of malnutrition and undernourishment in Latin America, particularly amongst indigenous peoples, with 60 per cent of families not getting enough to eat.[3] The Special Rapporteur welcomes the courageous efforts of the current Government, which has launched the initiative *Frente Contra el Hambre* (Front against Hunger), appointed a Commissioner Against Hunger and set up a powerful legal and policy framework that recognizes the Government's obligations to respect, protect and fulfil the right to food. He is also very supportive of the Government's efforts to catalyze action at the international level, through the holding of a regional Latin American conference on hunger eradication in September 2005. This sets a vivid example of the growing awareness of the need to catalyze action to eradicate hunger and malnutrition.

5. In the view of the Special Rapporteur, it is scandalous that in a world richer than ever before so many people struggle to survive. He calls on the General Assembly to take urgent action to fight famine everywhere, but also to fight chronic, debilitating malnutrition. It is unacceptable that more than five million infant children are killed by malnutrition and related diseases every year,[4] but it is also unacceptable that hundreds of millions of children do not eat enough to sustain a

normal life, leaving them mentally and physically stunted for the rest of their lives. This is absurd in a world that is entirely capable of eradicating hunger. According to FAO, the planet could produce enough food to provide 2,100 kcals per person per day to 12 billion people, that is, twice the existing world population. Hunger and famine are not inevitable. They are a violation of human rights.

6. All human beings have a right to live in dignity, free from hunger. The right to food and the right to freedom from hunger are human rights protected under international human rights and humanitarian law. The right to adequate food is recognized in the International Covenant on Economic, Social and Cultural Rights and has been authoritatively defined in general comment No. 12 (1999) in the following terms: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement" (para. 6). Based on the general comment, the Special Rapporteur summarizes the definition of the right to food as follows:

> "The right to food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear".[5]

7. The work of the Special Rapporteur to fight for realization of the right to food has included many activities over the last year. In his annual report to the Commission on Human Rights (E/CN.4/2005/47) he expressed grave concern about persistent violations of the right to food across the world, but also reported on several positive initiatives taken to fight hunger at both the global and local levels, including the adoption, in November 2004, of the "Voluntary Guidelines" by the FAO Council, which are ground-breaking principles that set out an internationally accepted definition of the right to food. In his report, he also examined the issue of "extraterritorial" responsibilities of States towards the right to food, and reported to the Commission on his missions to Ethiopia (E/CN.4/2005/47/Add.1) and to Mongolia (E/CN.4/2005/47/Add.2).

8. This year, the Special Rapporteur has carried out missions to Guatemala (in February 2005) and to India (in August 2005). He also carried out a special urgent mission to Niger in July 2005, which is detailed below. The Special Rapporteur has also made requests to undertake country missions to the Democratic People's Republic of Korea and Myanmar, but has received no response from the respective Governments. He has also continued to issue urgent appeals and press statements, individually and jointly with other special rapporteurs, on urgent situations related to the right to adequate food in Niger, Equatorial Guinea, India, Myanmar, Philippines, Pakistan, Democratic Republic of the Congo, Democratic People's Republic of Korea, Romania, the Sudan and Zimbabwe. He also made a press statement on the issue of excluding humanitarian food aid provided by the World Food Programme (WFP) from the negotiations in the Doha Round of the World Trade Organization (WTO).

II. Situation of special concern: famine in Niger

9. The Special Rapporteur conducted an urgent mission to Niger from 8 to 12 July 2005 The objective of the mission was to raise awareness about the dramatic food situation. He was accompanied by a United Nations television team and wishes to thank them for their efficient work in generating a reaction by the international community. Despite numerous appeals by the Government and the United Nations agencies since November 2004, there was little response to the crisis until August 2005. At a press briefing on 24 May 2005, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland described Niger as "the number one forgotten and neglected emergency in the world".

10. During his mission, the Special Rapporteur witnessed the gravity of the situation. Almost a third of the population, around 3.6 million people, including 800,000 children, were facing acute malnutrition, and in some regions vulnerable people, in particular infant children, were already dying from starvation. According to the Government's surveillance of the hunger situation in July 2005, only 19 out of 106 zones were in a satisfactory food situation, the situation in all other zones being critical or extremely critical. During visits to Ouallam and Tondikiwindi, the Special Rapporteur saw evidence that thousands of farmers were reduced to subsisting on seeds gathered from termite mounds and roots and poisonous fruits called *Anza*. Most men had left the fields to try to find work and their undernourished wives were too weak to work in the fields, threatening the next harvest of millet that is not due before October, and only then if the rains come. The Special Rapporteur also visited the Saga Emergency Feeding Center operated by the Mother Theresa Sisters on the outskirts of Niamey, where he received reports that undernourished children were dying from hunger every week.

11. Niger is a proud country inhabited by some of the greatest civilizations of humanity — the Songhai, the Djerma, the Hausa, the Tuareg, the Peul — men and women of great dignity, courageous and hardworking. Yet, like other countries of the Sahel, Niger has been in economic and environmental crisis, with only brief respites, for much of the twentieth century. Since the 1970s, recurring drought and famine have become more severe. Not only is Niger's climate harsh and unforgiving, but the international climate is also not conducive to resolving the fundamental problems of the Sahel (see E/CN.4/2002/58/Add.1), and food crises cannot always be prevented by the Government.

12. The Special Rapporteur met with the President and the Prime Minister, as well as with the directors of the Food Crisis Unit, the Office for Food Production in Niger and the Early Warning System. He found that the Government had already taken action to address the emergency situation, selling food reserve stocks at reasonable prices, promoting the use of grain banks, and providing fodder to farmers. The Special Rapporteur urged the Government to begin free distribution of food aid to vulnerable groups, especially children, pregnant women and elderly people, and to guarantee free access to health units for undernourished children, as cost-recovery policies did not make sense in an extreme emergency. The Government agreed that it would do this as far as possible with its limited resources. The Special Rapporteur found that the role of the United Nations agencies (including UNICEF, FAO, WFP, UNDP, WHO, UNFPA, and the World Bank) and international non-governmental organizations (NGOs) (MSF, Action against

Hunger, Oxfam, World Vision, Plan International) was also critical, although their resources were limited.

13. The Special Rapporteur was concerned that the response of the international community was extremely slow. Of the US$ 16.2 million requested in the urgent appeal launched by the United Nations in May 2005 to cover basic essential needs, only $3.8 million had been received. Even the appeal by the Prime Minister on 28 May 2005 generated a slow response. However, the Special Rapporteur was encouraged that, with increased media attention, the response has been swifter since August 2005. The Arab States, including Algeria, Morocco, the Libyan Arab Jamahiriya, Saudi Arabia and Dubai sent emergency food aid and promised funds. The European Union, France, Sweden, Norway, Switzerland, Belgium, Denmark, Germany and the United States of America also sent emergency aid and announced that they would contribute US$ 10 million. Venezuela alone announced that it would contribute $3 million.

14. In a press release issued on 13 July 2005, the Special Rapporteur emphasized that the right to food is a human right, and called on all Member States to honour their obligations to ensure the right to food of Niger's population. When a country does not have enough resources to fulfil the right to food of its population, it has a legal obligation to actively seek international assistance and cooperation, and other States have an obligation, depending on the availability of their resources, to facilitate the realization of the right to food through development cooperation and to provide emergency aid when required. National Governments have the primary obligation to respect, protect and fulfil the right to food of their populations. However, all Member States also have extraterritorial obligations to respect, protect and support the fulfil of the right to food of people living in other countries, as pointed out by the Special Rapporteur in his report to the Commission on Human Rights (see E/CN.4/2005/47, paras. 34-59). This means ensuring adequate provision of food aid, but it also means addressing the underlying factors that produce repeated famine.

15. The current crisis is the result of both unfavourable economic trends and structural shortcomings. Its immediate causes are the drought and the locust invasion that destroyed many crops in 2004, impeding pasture and cereal production; but its more profound causes are the pervasive food insecurity which heightens vulnerability to food crises. Of a population of 12 million, more than 3.6 million people suffer from chronic malnourishment, with 80 per cent suffering from food insecurity and 61 per cent living in extreme poverty (see E/CN.4/2002/58/Add.1). Even in normal years, one out of four children dies before the age of five. Despite being the second poorest country in the world, Niger receives very little development aid or investment compared to other countries and has few resources to invest in agriculture and irrigation necessary in its arid climate. The Special Rapporteur also believes that the market-based paradigm of development, largely imposed by IMF and the World Bank, has been harmful to food security for the most vulnerable. Cost-recovery policies in health centres, for instance, mean that many poor children are not being treated for malnutrition. During his visit in 2001, the Special Rapporteur also found that the privatization of Government support services, including the logistics and distribution system OPVN (Office des Produits Vivriers du Niger) and the veterinary services, had limited access to essential extension services, exacerbating food insecurity amongst small-scale farmers and pastoralists (see E/CN.4/2002/58/Add.1).

16. The immediate provision of free food aid is essential to avert famine. Addressing the underlying structural causes of hunger is also essential to limit vulnerability to future famines and to fully realize the right to food of the people of Niger. The Special Rapporteur therefore urges the Government of Niger, as well as the Governments of the Member States and international organizations, to take immediate action to respect, protect and fulfil the right to food in Niger.

III. The right to food of indigenous peoples

17. Over the years, a number of indigenous organisations have expressed, at the annual sessions of the Working Group on Indigenous People and most recently at the Permanent Forum on Indigenous Issues, their deep concerns over the obstacles and challenges that their communities fact in fully enjoying their right to food. A number of indigenous organizations have urged the Special Rapporteur to address the question of the right to food of indigenous peoples as a separate question in his work. As was stated in the Declaration of Atitlán, at the First Indigenous Peoples' Global Consultation on the Right to Food in April 2002 in Guatemala:

> "the denial of the Right to Food for Indigenous Peoples not only denies our physical survival, but also denies us our social organization, our cultures, traditions, languages, spirituality, sovereignty, and total identity; it is a denial of our collective indigenous existence."

18. In international law, the right to adequate food and the fundamental right to be free from hunger applies to everyone without discrimination, yet the right to food of indigenous peoples is frequently denied or violated, often as a result of systematic discrimination or the widespread lack of recognition of indigenous rights. The levels of hunger and malnutrition among indigenous peoples are often disproportionately higher than among the non-indigenous population, and yet they often do not benefit from programmes designed to fight hunger and malnutrition or to promote development. Moreover, inappropriate development efforts often intensify the marginalization, poverty and food insecurity of indigenous peoples, failing to recognize indigenous ways of securing their own subsistence and ignoring their right to define their own path toward development. In its report to the Economic and Social Council, the Inter-Agency Support Group on Indigenous Issues expressed concern that the universality and simplicity of expression of the Millennium Development Goals may lead to homogenization instead of equality in respect of the enjoyment of human rights, if the specificities of indigenous peoples is not acknowledged and addressed (E/C.19/2005/2, section II, para. 7).

19. Indigenous and tribal peoples represent some 5,000 distinct peoples and around 350 million people, with the vast majority living in developing countries. It has long been understood that due to long historical processes of colonization, exploitation and political and economic exclusion, indigenous peoples are among the most vulnerable to poverty, hunger and malnutrition. The right to food is directly linked to the situation of extreme poverty under which many indigenous peoples live. One of the earliest international studies was carried out in 1953 by the International Labour Organization (ILO), which found that the living standards of indigenous populations were extremely low, considerably lower than those of the non-indigenous population.[6] Three decades later, the Special Rapporteur of the Subcommission José Martínez Cobo found that indigenous peoples were at the

bottom of the socio-economic scale.[7] The present Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people also found that "indigenous peoples the world over are usually among the most marginalized and dispossessed sectors of society" (A/59/258, para. 10). A research project undertaken by ILO study found that many poverty reduction strategies do not take indigenous peoples into account in the process or in the strategies proposed.[8] In a study published in 1994, the World Bank found that "poverty among Latin America's indigenous population is pervasive and severe" and that "the living conditions of the indigenous population are generally abysmal",[9] and in an update carried out in 2004, found that little progress had been made.[10]

20. A study undertaken by the Inter-Agency Support Group for the Permanent Forum on Indigenous Issues[11] shows that despite widespread awareness of the vulnerability of indigenous peoples, there is a lack of disaggregated data on the situation of indigenous peoples and therefore often little information available about the exact extent of hunger and malnutrition. The general lack of information gathering often reflects the reluctance of Governments to recognize the issues faced by their indigenous populations. Only recently has data started to be collected. In Guatemala for instance, where the Government has made important efforts to disaggregate statistics, it is clear that indigenous peoples face much higher levels of poverty and malnutrition than the rest of the population. While half of all Guatemalan children under the age of five are stunted, malnutrition is much higher amongst indigenous children, with 70 per cent stunted in their growth compared to 36 per cent of non-indigenous children.[12]

21. Understanding what the right to food means to indigenous peoples is however far more complex than merely examining statistics on hunger, malnutrition or poverty. Many indigenous peoples have their own particular conceptions of food, hunger, and subsistence. In general, it is difficult to conceptually separate indigenous peoples' relationships with food from their relationships to land, resources, culture, values and social organization. Food, procurement and consumption of food are often an important part of culture, as well as of social, economic and political organization. Many indigenous peoples understand the right to adequate food as a collective right. They often see subsistence activities such as hunting, fishing and gathering as essential not only to their right to food, but to nurturing their cultures, languages, social life and identity. Their right to food often depends closely on their access to and control over their lands and other natural resources in their territories. For many traditional communities, especially those living in remote regions, access to hunting, fishing and gathering grounds for their subsistence livelihoods is essential for ensuring their adequate nutrition, as they may have no physical or economic access to marketed food. As a study on the food security of Inuit peoples of Alaska shows, "the legal protection of subsistence is a prerequisite to Inuit food security for nutritional, cultural and economic reasons".[13] The loss of access to traditional subsistence activities has left some indigenous communities dependent on cheap fast food, suffering from high levels of diabetes and other nutritional problems (see E/CN.4/2005/88/Add.2).

22. In the present section, the Special Rapport highlights key issues currently affecting the right to food of indigenous peoples across the world, and outlines a legal and conceptual framework to better address their right to food.

A. Key issues facing the right to food of indigenous peoples

The lack of recognition of rights to land and resources

23. The realization of indigenous peoples' right to food often depends crucially on their access to and control over the natural resources in the land and territories they occupy or use. Only then can they maintain traditional economic and subsistence activities such as hunting, gathering or fishing that enable them to feed themselves and preserve their culture and distinct identity. Yet for centuries, indigenous peoples have been dispossessed of their land, resources and access to water and that trend continues today. While indigenous land rights are largely vested on the community as such, with land being divided into individual or family holdings only for the purpose of economic use, this traditional form of ownership and possession has been under pressure for a long time, starting with colonization. Attempts have been made to break collective control of land and to allow for the privatisation of land and its subsequent transfer onto the market. In Guatemala for example, communally-held indigenous lands (*ejidos*) were nationalized or privatized as individual holdings in the 1800s, with the deliberate aim of consolidating the land into large coffee plantations. As the best coffee was cultivated at an altitude between 800 and 1,500 metres, many indigenous people were displaced from their lands and forced to relocate to steeper, less fertile ground for their subsistence farming.[14] More recent land reform processes aimed at facilitating and encouraging foreign investment are further undermining traditional indigenous forms of ownership over land, water and other resources. However, as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has noted, "land, territory and resources constitute an essential human rights issue for the survival of indigenous peoples" (E/CN.4/2002/97, para. 57). In August 2001, for example, the Mayagna community of Awas Tingni won a case in the Inter-American Court of Human Rights, which ruled that the Government of Nicaragua had violated the community's property rights in granting their land to a foreign timber company, and imposed that the State recognize, demarcate and issue title for the land belonging to the Mayagna community.[15]

Appropriation of resources — intellectual property rights

24. For centuries, indigenous peoples have been dispossessed of their lands and resources, often through the imposition of colonial laws. Today, a similar pattern continues as indigenous peoples continue to lose even their genetic resources and indigenous knowledge. Indigenous peoples are concerned that recent developments in international intellectual property rights regimes represent a threat to indigenous access to and control over plant and animal genetic resources, as well as to community knowledge gained over generations. Concern is rising among indigenous communities and farmers about "bioprospecting" and the appropriation or "biopiracy" of their traditional knowledge and folklore, particularly about the curative and nutritive properties of plants and animals. Indigenous peoples see the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as a framework for the appropriation of traditional knowledge by agrochemical industrialists and researchers in industrialized countries. They want to be consulted about the ways their knowledge is used, and to equitably share in any benefits.[16] They are particularly concerned about developments in biotechnology and intellectual property protection that could deprive indigenous farming communities

of their access to and control of seeds and livestock breeds, allowing intellectual property protection to "inventions" that will later require pay for its use.[17] In 1994 for example, two researchers of the Colorado State University researchers obtained a U.S. patent on quinoa, a high-protein grain traditionally used by Andean indigenous peoples in Bolivia and Ecuador. Indigenous peoples were frustrated that researchers in the United States could be granted the status of "inventors" of quinoa and given exclusive control over a traditional Bolivian variety. In 1998, Bolivia's National Association of Quinoa Producers (Asociación Nacional de Productores de Quinoa — ANAPQUI) managed to have the University surrender the patent.[18]

Negative impacts of inappropriate development

25. Development projects in lands and resources owned or controlled by indigenous can also threaten the right to food of indigenous communities. As the Special Rapporteur of the Subcommission on the Promotion and Protection on Human Rights Erica-Irene Daes noted in her final working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/2001/21, para. 67), "economic development has been largely imposed from outside, with complete disregard for the right of indigenous peoples to participation in the control, implementation and benefits of development". Development projects are often carried out without the free, prior and informed consent of those affected, and can threaten the right to food through the destruction or loss of ancestral territories and resources or displacement. This often happens in the case of large-scale commercial exploitation of the resources on indigenous territories — including mining for minerals, oil or gas, logging, building dams and highways, or expanding industrial agriculture on indigenous lands, which can seriously threaten the right to food. Authorities rarely assess the likely impact of such projects nor do they take timely corrective action, despite legal obligations under the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. In a case in Malaysia, the Malaysian Court of Appeal did award compensation to the Jakun tribe, an Orang Asli population, after the state government had appropriated more than 53,000 acres of ancestral lands in the southern state of Johor for the construction of a dam to supply water to Johor and Singapore, without consulting or the local communities or sharing the benefits with them.[19] In the Declaration of Atitlán on the right to food, the representatives of indigenous communities criticized the dominant model of economic development based on globalized free trade, industrial agriculture and unsustainable development, for undermining alternative modes of subsistence and violating their right to food.

Lack of access to justice

26. A critical element for the possibilities of indigenous peoples to enforce their right to food is their access to the judicial system. Even where indigenous do have access to justice, it is often limited by geographical distance, discrimination and prejudice, and the non-recognition of indigenous customary law and legal authorities. Often, the implementation of laws protecting indigenous rights is insufficient and indigenous themselves lack sufficient knowledge about the laws and institutions designed to protect their rights, a situation that results in third-party interests finding it easy to dispossess and exploit them. Indigenous peoples are also critical of the repression that often characterizes the relationship between Governments and indigenous communities, even when they have resolved their

cases. In a case reported to the Special Rapporteur, it was alleged that a group of 86 peasant families has been forcibly evicted from their land *El Maguey* farm (Fraijanes) in Guatemala, with their crops and irrigations system destroyed repeatedly by the police and the army over the last 2 years, despite the recognition that they own the land in a Governmental Agreement dated 7 April 2003 and a Constitutional Court decision dated 4 May 2004.[20] The Special Rapporteur is particularly concerned by some reports of the use of food as an instrument of political or economic pressures, particularly in situations of conflict. In Colombia, for instance there are serious concerns about blockades that prevent food reaching indigenous communities, threatening their food security and forcing them into the conflict (see E/CN.4/2005/88/Add.2).

B. Legal framework governing the right to food of indigenous peoples

27. The international framework for the protection of the rights of indigenous peoples is still relatively weak. The only international instrument offering specific protection is ILO Convention No. 169, which until now has been ratified by 17 countries. This Convention is important, protecting indigenous peoples' right to food, as well a broad range of civil, political, economic, social and cultural rights. Articles 13 to 17 provide special protection of indigenous peoples' rights to land and territories, and their right to participate in the use, management and conservation of these resources, requiring their participation and consultation before any exploitation of resources located on indigenous lands and prohibiting the displacement of indigenous communities.

28. The draft United Nations declaration on the rights of indigenous peoples, which is under discussion by the Commission on Human Rights since 1995, would offer greater protection, going beyond the ILO Convention. It recognizes the right to self-determination and rights over land and resources, acknowledging the historical injustices of colonization but also addressing contemporary threats posed by globalization, offering protection of traditional knowledge, biodiversity and genetic resources, and setting limits to activities of third parties on the territories of indigenous communities without their consent. However, the draft declaration has not been adopted by Governments, as many of them still contest the rights of indigenous peoples to self-determination, their ownership over land and resources, and the notion of collective rights.[21]

29. Nonetheless, broader human rights instruments offer protection to all peoples, including indigenous peoples. The International Covenant on Economic, Social and Cultural Rights protects the right of everyone to food in article 11. The Committee on Economic, Social and Cultural Rights, in its general comment No. 12 (1999) stresses their right to food by and highlights that "particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened" (para. 13). The Committee also outlined that the right to adequate food implies that food is available, accessible, adequate and *culturally* acceptable, which means that food should correspond to the cultural traditions of the people. This has special implications for indigenous peoples, for whom culturally appropriate foods derive from subsistence-based activities, such as hunting, gathering or fishing, with implications in terms of maintaining their livelihoods. Even in communities that are closely integrated into the mainstream economy, imported foods are sometimes too expensive or non-nutritious and subsistence activities play an important part in

maintaining their food security, as well as their culture and identity. The general comment outlines the obligations of States to respect, protect, and fulfil the right to food and demands that food should never be used as an instrument of political or economic pressure.

30. Of special importance to the right to food of indigenous peoples is common article 1 of both human rights covenants, which recognizes the rights of all peoples to self-determination and the right to freely pursue their economic, social and cultural development. Moreover, paragraph 2 of that article also stipulates that in no case may a people be deprived of its own means of subsistence. The prohibition of discrimination, contained in article 2 of the International Covenant on Civil and Political Rights, is also of crucial importance for indigenous peoples. Non-discrimination sometimes requires affirmative action and measures in favour of indigenous peoples to compensate or redress traditional imbalances and marginalization. Other human rights instruments protecting women and children are also relevant to indigenous peoples. Control over and preservation of plant and animal genetic resources is today crucial for the economic interests of indigenous peoples and their long-term food security. Article 8 of the Convention on Biological Diversity in conjunction with the International Treaty on Plant Genetic Resources for Food and Agriculture provide a legal framework for the protection of those rights.

C. A framework for the right to food of indigenous peoples

31. The Special Rapporteur believes that the right to food of indigenous peoples can be understood within the framework laid out by the Committee on Economic, Social and Cultural Rights that requires States to respect, protect and fulfil the right to food of all members of their population. This implies that the right to food is not only a positive right, it is also a negative right that aims to prevent violations of indigenous people's existing access to food.

The obligation to respect

32. The obligation to respect the right to food requires that Governments refrain from taking any action that would negatively affect peoples' existing right to food. This entails refraining from acts such as dispossessing or displacing people from their land, where their land is their primary means of subsistence. It also means refraining from realizing development projects that may obstruct or destroy traditional access to subsistence resources, such as hunting or fishing, where this constitutes indigenous peoples' main means of feeding themselves. It also means that Governments must never engage in killings and repressive actions against indigenous peoples, where they are engaged in peaceful protest to protect their right to food, land and resources.

The obligation to protect

33. The obligation to protect the right to food requires Governments to ensure that third parties (such as powerful landowners or corporations) do not take any actions that negatively affect indigenous peoples' right to food. This means that Governments must regulate or control powerful third parties to prevent abuses of the right to food of indigenous peoples. Third parties should be prevented from

displacing indigenous peoples from their lands and resources. In cases where a Government grants concessions to corporations for the exploitation of resources on indigenous lands, it should adhere to the principle of free, prior and informed consent of indigenous peoples to ensure that they agree to and benefit from the exploitation of their resources and that their food security is not threatened. This requires also to ensure mitigating the human and ecological costs of environmentally damaging projects, such as gold mining, to ensure that traditional food, water, and other subsistence resources are not destroyed or poisoned.

The obligation to fulfil (facilitate and provide)

34. The obligation to fulfil the right to food requires Governments to take steps to address the marginalization, hunger and poverty of indigenous communities, with respect to indigenous peoples' own priorities, in order to ensure their integrity and cultural survival. This obligation is made up of two positive obligations — the obligations to *facilitate* and the obligation to *provide*. The key obligation to facilitate indigenous peoples' right to food requires Governments to take positive actions to facilitate the capacity of indigenous communities to feed themselves, such as formally recognizing and demarcating indigenous territories to enable them to carry out subsistence activities. Governments also have an obligation to respect the right of indigenous peoples to determine how best to improve their food security and to pursue their own priorities for development. Governments are always required to prevent starvation and ensure access to food, by facilitating the provision of marketed food where necessary and providing emergency food in situations of crisis. The obligation to fulfil also includes an immediate obligation to take action against discrimination against indigenous peoples in terms access to land, employment and other productive resources. This requires not only overturning de jure legal institutions of discrimination, but also addressing de facto discrimination against indigenous peoples that contributes to their hunger and malnutrition.

IV. The responsibilities of international organizations concerning the right to food

35. The mandate of the Special Rapporteur requires that he bring "emerging issues" related to the right to food to the attention of the Commission on Human Rights. One key issue currently being debated by the international human rights community is the issue of the human rights responsibilities of international organizations. The Commission has called on treaty bodies and special procedures to take account of its resolution 2005/17 on globalization and human rights that affirms the need for multilateral institutions to recognize, respect and protect all human rights.

36. The Special Rapporteur concurs with the Commission on Human Rights that it is essential to examine the issue of the human rights responsibilities of international organizations, such as the World Bank, the International Monetary Fund (IMF) and WTO. Although the primary responsibility for human rights always rests with the national Government, in the current climate of globalization and strong international interdependence the a national Government is not always able to protect its citizens from the impacts of decisions taken by other actors. As he argued in his report to the

Commission, in an increasingly globalized and integrated world, the power of nation States is often eclipsed by other actors, such as more powerful States, multinational corporations or international organizations. Just as human rights were designed to regulate the power of the nation State over its citizens, it is now time to extend the traditional boundaries of human rights to regulate the power of these other international actors. In his previous reports, the Special Rapporteur addressed two important issues in this regard. The first was the human rights responsibilities of non-State actors, such as transnational corporations (E/CN.4/2004/10). The second was the issue of extraterritorial obligations (E/CN.4/2005/47) — the human rights obligations of Governments towards people living outside of its own territory to ensure that their policies do not contribute to human rights violations in other countries.

37. In the present report, the Special Rapporteur is examining the third issue: intergovernmental responsibilities in the field of human rights of multilateral inter-State organizations such as IMF, the World Bank and WTO. Given the powerful role that these organizations play in determining economic policies, particularly in countries in the South, these organizations can have an important impact on human rights. There is no doubt, for example, that the programmes of economic reform imposed by IMF and the World Bank on indebted countries have a profound and direct influence on the situation of the right to food and food security in many countries. However, it is often argued that as these organizations are intergovernmentall organizations directed by Governments, they have no direct responsibilities in relation to human rights, including the right to food. Some authors think, for example, that WTO is merely a mechanism for negotiation between States and that Governments of member States are themselves accountable for all the rules and actions of WTO. Others again think that organizations such as the World Bank and IMF, despite having Governments on their executive councils, still take autonomous actions and that it is important to consider the direct responsibilities of intergovernmental organizations as institutions in themselves. The Special Rapporteur is convinced that with power must come responsibility. Therefore, as the Special Rapporteurs of the Subcommission for the Promotion and Protection of Human Rights J. Oloka-Onyango and Deepika Udagama have stated:

> "there is need for a systematic elaboration of the manner in which MLIs (multilaterall institutions) are bound by the Universal Declaration of Human Rights, the International Covenants and other human rights instruments. In short, there is a need for a *restatement* or codification of the law, in its applicability to MLIs."[22]

38. Much work is currently being done by academic institutions and non-governmental organizations (NGOs) to better understand the definition and content of these responsibilities of international organizations in relation to human rights, some of which focusing on the right to food. This includes studies by the International Federation of Human Rights Leagues,[23] 3D — Trade — Human Rights — Equitable Economy and FORUM-ASIA,[24] Foodfirst Information and Action network (FIAN),[25] and by many academics, including S. I. Skogly,[26] A. Clapham,[27] M. Darrow[28] and B. Ghazi,[29] as well as the Committee on Economic, Social and Cultural Rights[30] and the Subcommission for the Promotion and Protection of Human Rights.[31]

39. This section first examines some key ways in which international organizations can have an impact on the right to food. It then outlines a legal framework for the responsibilities of international organizations and presents a typology of the obligations of international organizations *to respect*, *protect*, and *support the fulfilment of* the right to food.

A. Key impacts of international organizations on the right to food

40. The activities of the World Bank, IMF and WTO are in very different ways intimately related to policymaking as well as development projects, particularly in developing countries.

41. Many NGOs and civil society organizations have documented violations of the right to food that have occurred in the context of programmes and projects funded by the World Bank.[32] Typical cases include large development projects involving the constructions of dams in areas occupied by minorities or indigenous peoples who are forcibly displaced without due process and compensation. Other examples include projects financed by the World Bank in the mining or water infrastructure sectors that clearly carry adverse consequences for the human rights and even open violations of the indigenous' rights to their land, food and water. For example, the Kedung Ombo Project for a dam construction in Indonesia that started in 1985 with a loan approved by the World Bank and was completed in 1989, reportedly involved forced displacement without compensation and other related abuses. This project allegedly involved the displacement of nearly 12,000 people who lost their land and their means of subsistence as a result thereof. Another example is the implementation of a coal-mining project in Jharkjhand, India, funded by the World Bank, which led to important involuntary resettlements and the destruction of many houses and sources of livelihood. In this case, despite clear recommendations made by the World Bank's own Inspection Panel in November 2002, the affected people had still not been adequately compensated and rehabilitated.[33]

42. The far-reaching policies of structural adjustment and poverty reduction strategies encouraged by the World Bank and IMF have significant impacts on the capacity of the nation State to meet its obligations in ensuring the right to food. Many NGOs and civil society organizations claim that the economic policies advocated by the World Bank and IMF through programmes such as structural adjustment programmes or poverty reduction strategies have had negative impacts on the right to food of large sections of the populations of many countries, particularly in Africa, but also in Asia and Latin America. Far from improving food security for the most vulnerable populations, these programmes have often resulted in a deterioration of food security among the poorest. The strong advocacy pursued by the World Bank and IMF for the drastic reduction of public spending, the privatization of public enterprises, trade liberalization and the flexibilization of financial, labour and land markets has had negative impacts on the right to food and other economic, social and cultural rights. One study on India, for example, suggests that when in July 1991 the Government introduced the budgetary reforms advocated by IMF, the resulting cuts in spending affected subsidies for staples and basic foodstuffs that supported the poorest. With the price of rice rising by 50 per cent and the revenue of workers falling dramatically, the three months following the introduction of the reform saw at least 73 deaths by starvation reported in the State of Andra Pradesh.[34] In Zambia, after a programme of rapid structural adjustment

was introduced in the 1990s, an evaluation made by IMF itself recognized that the liberalization in agriculture had caused hardship for poor Zambians, with maize consumption falling by 20 per cent between 1990 and 1997 as the poorest could not afford enough to eat.[35] In most cases, the World Bank and IMF have not required that prior to introducing rapid adjustment measures safety nets be put in place that would support the poorest and most vulnerable populations, an omission which has resulted in the cases of starvation deaths in India and severe malnourishment in Zambia described above.

43. The rules of WTO, particularly the rules on trade in agriculture, also have a significant impact on the policies that Governments can choose in terms of maintaining their food security (see E/CN.4/2004/10, para. 14-34).[36] Much of the trade liberalization so far undertaken in agriculture, particularly in developing countries, has been required under IMF and World Bank programmes, and not WTO. Nonetheless, WTO has had an important impact through the way it "locks in" and formalizes liberalization measures, leaving countries unable to reverse measures that might have significant negative impacts on food insecurity and malnutrition. The widely recognized inequities in the current WTO rules on agriculture, detailed in reports such as *Rigged Rules and Double Standards* published by Oxfam[37] also severely affect small farmers and put developing countries at a serious disadvantage compared to developed countries.[38] The Special Rapporteur is also concerned that current proposals within WTO on "disciplining" humanitarian aid may have serious implications for the provision of free emergency food aid in future emergencies, as he already outlined in his statement to the press made on 19 July 2005. The Special Rapporteur believes that food aid provided for humanitarian purposes and distributed by humanitarian organizations such as WFP must be excluded from the WTO negotiations under the Doha Round.

B. The legal framework: international organizations are legal persons with rights and duties, including direct responsibilities concerning the right to food

44. There is no question today that international organizations such as the World Bank, IMF and WTO have legal personality under international law. In its advisory opinion on *Reparation for Injuries Suffered in the Service of the United Nations*, the International Court of Justice, in 1949, interpreted an international organization as a subject of international law and capable of possessing international rights and duties. As subjects of international law, international organizations are thus bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.[39] For the Special Rapporteur, it is clear that international law is binding on international organizations such as the World Bank, IMF and WTO, including as concerns the human right to food.

45. In many instances, international organizations, particularly IMF and the World Bank, have disputed their responsibilities towards human rights, on the ground of three main arguments. First, they argue that they are multilateral organizations, directed to take action by Governments and therefore do not have autonomous responsibilities in relation to human rights. However, it is clear that these organizations are not only driven by the decisions of their member States, as they

have important autonomous decision-making powers. The World Bank is governed by a Board of Governors representing all member States, but its day-to-day business is run by a Board of Executive Directors, with five out of 24 members appointed by the largest shareholders (the United States being the largest with over 15 per cent of shares, giving it a practical veto power in decision-making at the Bank). Although it has been claimed that the World Bank Group is "owned by its shareholders", the fact that the Board of Executive Directors and the largest shareholders control the activities of the organization suggests that it does take autonomous decisions in its actions. Similarly, although the highest governing body in IMF is the Board of Directors, which represents the whole membership, daily management rests with an Executive Board and autonomous decisions can also be taken by this Executive Board.

46. In WTO, on the other hand, it is clear that most decisions are taken by the Ministerial Conference or the General Council, both made up of Member States. For this reason it has often been characterized as a "member-driven" consensus-based organization, driven in other words by Governments, with no separate legal identity of its own.[40] But WTO does also have its own organs and agents through which it operates. The secretariat, for example, has a large margin of discretion to facilitate the implementation, administration and operation of the agreements, and to this end is engaged in wide-ranging technical assistance projects. Some of its organs, such as the Dispute Settlement Body (DSB) are also required to achieve decisions, including interpretations of WTO law, that are essential to the organization. As an international organization, WTO should thus also be bound by international human rights, including the right to food.

47. Secondly, according to the principle that international organizations have only rights and duties commensurate to their functions and powers,[41] the World Bank and IMF have argued that their constitutive instruments (Articles of Agreement) preclude them from using political considerations in their activities. However, the suggestion that this precludes them from dealing directly with human rights is not well founded. Relevant provisions (for instance Article IV, section 10, of the Articles of Agreement of the Bank) can be interpreted so as to allow those institutions to integrate human rights considerations into their activities.[42] Furthermore, in accordance with the same principle of functional legal personality, the World Bank, IMF and WTO all carry out activities and perform functions that have an important, and sometimes crucial, influence on the realization of the right to food and other rights in member States. In carrying out those functions these organizations should therefore be bound to ensure respect for human rights, including the right to food, in a way commensurate to their power.

48. Lastly, IMF and the World Bank have argued that they do not have responsibilities in the field of human rights because they are organizations and not States, and in that capacity have not ratified the respective human rights treaties.[43] It would therefore follow that as IMF, the World Bank and WTO have not ratified the International Covenant on Economic, Social and Cultural Rights, they would not be bound by obligations in respect to the right to adequate food. However, such an argument overlooks the widely recognized view that human rights find their source not only in treaties but also in customary international law. The obligation to realize the right to adequate food has become today part of customary international law, given the almost universal ratification of treaties that contain it (in particular the International Covenant and the Convention on the Rights of the Child) and the

constant practice of States in reaffirming the right to food and the fundamental right to be free from hunger at the World Food Summits in 1996 and 2002 and other international conferences, as well as in the General Assembly and the Commission on Human Rights.[44] There is no reason to assume that international economic organizations are not bound by general international law on the right to food and other human rights. Furthermore, as in the case of the European Union, international organizations are bound by general principles of law recognized by civilized nations, which can be drawn from national legal systems.[45] Many national constitutions recognize the right to food or require the interpretation of their provisions to be in accordance with international human rights law where the right to food is fully recognized. Finally, most member States of these international economic organizations have ratified at least one human rights treaty in which the right to food is contained. Clearly, international organizations cannot be free to do what their constituents are not permitted to do.

C. A framework for the right to food responsibilities of international organizations

49. In its resolution 2005/17 on globalization and human rights, the Commission on Human Rights affirmed the need for multilateral institutions "to recognize, respect and protect all human rights". In their final report, the Special Rapporteurs of the Subcommission for the Promotion and Protection of Human Rights J. Oloka-Onyango and Deepika Udagama noted that "reiteration of the legal obligation of international organizations such as the WTO, the World Bank and the IMF is deemed necessary in order to emphasize the point that these institutions must, at a minimum, *recognize, respect, and protect* human rights" (E/CN.4/Sub.2/2003/14, para. 39). However, as many others have suggested, these organizations would also have obligations to positively promote and assist States in their efforts to protect and realize the right to adequate food of their populations.[46] As the Committee on Economic, Social and Cultural Rights has argued:

> "international organizations ... have a strong and continuous responsibility to take whatever measures they can to assist governments to act in ways which are compatible with their human rights obligations and to seek to devise policies and programmes which promote respect for those rights. It is particularly important to emphasize that the realms of trade, finance and investment are in no way exempt from these general principles and that the international organizations with specific responsibilities in those areas should play a positive and constructive role in relation to human rights."[47]

50. The Special Rapporteur suggests that in order to fully comply with their obligations under the right to food, international organizations must *respect*, *protect* and *support the fulfilment* of the right to food by their member States.

The obligation to respect

51. The obligation to respect is a minimum obligation, which requires international organizations to ensure that their advice, policies and practices do not lead to violations of the right to food.[48] This means that, at least with regard to the World Bank and IMF, international organizations should be have minimum negative obligations to respect or not to do harm in relation to the realization of the right to

food. This prohibition of doing harm seems to be universally recognized. This means that these organizations should not promote "development" projects that would result in forced displacement or the destruction of sources of livelihood, especially in cases without proper compensation and rehabilitation for the affected populations. It also means that actions and decisions of the World Bank, IMF and WTO should not increase people's food insecurity in a given country, including the poorest people. Adjustment measures should not be implemented without carrying out impact studies for vulnerable groups, and putting in place necessary safety nets in advance, to ensure that they will not result in starvation or chronic malnutrition. WTO would also have to take due account of the human rights obligations of its members and should advise against the adoption of trade policies that may have negative impacts on the right to food.

The obligation to protect

52. The obligation to protect requires international organizations to ensure that their partners, whether states or private actors, including transnational corporations, do not violate the right to food, including in cases where concessions and contracts are granted, or in common projects that could threaten people's livelihoods and food security. Those organs of WTO that have decision-making power, such as the DSB, should protect the right to food in judicial decisions, and should ensure that interpretations of WTO law are compatible with the human rights obligations of its member States regarding the right to food.

The obligation to support the fulfilment

53. The obligation to support the fulfilment of the right to food requires that international organizations facilitate the realization of the right to food and help to provide necessary assistance when required for all people, indigenous, minorities and vulnerable groups. This should include facilitating the capacity of all people to feed themselves, as well as helping to ensure emergency support when they cannot feed themselves for reasons beyond their control. In developing countries, where up to 80 per cent of the population may depend on agriculture, small-scale agriculture should form the basis of food security strategies, as non-agricultural employment is often inadequate to absorb all those forced out of agriculture. WTO should also ensure that trade rules adopted are raising the standard of living in all countries, and not permit the persistence of current inequities in rules on agricultural trade.

V. Conclusions and recommendations

54. **The persistence of hunger and extreme poverty across the world is not inevitable and is not acceptable. All Governments, individually and in cooperation with others, have a duty to respect, protect and fulfil the right to adequate food of all peoples.**

55. **The Special Rapporteur would make the following recommendations:**

(a) **All Governments should take urgent action to halt increases in global undernourishment around the world. As the Executive Director of the World Food Programme, Mr. James T. Morris, reiterated in his speech on Africa's food crises to the Security Council on 30 June 2005, "In 2000, at the**

Millennium Summit, every nation here made just that pledge — to halve hunger and poverty. It is time we begin to show progress."

(b) All Governments should respond rapidly to the food crises currently occurring across Africa. While national Governments have the primary obligation to ensure the right to food of their populations, they also have an obligation to seek international assistance and cooperation when they have insufficient resources, and other States have an obligation, depending on the availability of their resources, to facilitate the realization of the right to food through development cooperation and emergency aid.

(c) Food security should be ensured as a human right, and not left up to the vagaries of the market system that cannot address hunger in times of emergency. Emergency food aid should be excluded from market principles and provided free of charge.

(d) All Governments should adopt the United Nations declaration on the rights of indigenous peoples, and ensure that indigenous peoples have access to justice at national and international levels for violations of their right to food.

(e) All Governments should recognize that indigenous peoples suffer from disproportionately high levels of hunger and malnutrition and take special action to combat the causes, particularly the pervasive discrimination against indigenous peoples.

(f) All Governments should respect, protect and fulfil the right to food of their indigenous populations, including by recognizing their right to land, resources and traditional subsistence activities, their intellectual property rights over their genetic and knowledge resources and their right to appropriate development that does not result in further marginalization, exploitation, poverty or hunger. Governments should recognize that the right to food is not only a positive right, but also a negative right that requires Governments to refrain from taking actions that negatively affect indigenous people's existing access to food, such as the displacement, dispossession, or the destruction of traditional access to subsistence resources.

(g) International organizations, such as the World Bank, IMF and WTO should recognize that they do have binding responsibilities towards human rights, including the right to food. With power must come responsibility. International organizations should recognize their minimum obligation to refrain from promoting policies or projects that negatively impact the right to food, particularly where no social safety nets are implemented. They should also recognize positive obligations to protect, by ensuring that partners do not violate the right to food in the implementation of common projects, and to support Governments in the fulfilment of the right to food.

(h) Finally, it is unacceptable that the world, which is richer than ever before, can let five million infant children die every year from malnutrition and related diseases, and that 852 million people do not get enough to eat every day. The right to food is a human right.

Notes

[1] FEWS Alerts — http://www.fews.net/resources/gcontent/pdf/1000753.pdf.

[2] Mark W. Rosegrant, Sarah A. Cline, Weibo Li, Timothy B. Sulser, and Rowena A. Valmonte-Santos "Looking Ahead: Long-Term Prospects for Africa's Agricultural Development and Food Security" IFPRI *2020 Discussion Paper 41*, August 2005.

[3] See United Nations, *Situación de la Seguridad Alimentaria y Nutricional de Guatemala*, Guatemala, September 2003, pp. i-iii. See also World Bank, *Poverty in Guatemala* (Report No. 24221-GU0, February 2003, p. 83.

[4] See FAO, *State of Food Insecurity in the World 2004*.

[5] E/CN.4/2001/53, para. 14.

[6] International Labour Office, Indigenous Peoples. Living and Working Conditions of Aboriginal Populations in Independent Countries, Geneva, International Labour Office, 1953, p. 89.

[7] *Study of the problem of discrimination against indigenous populations*, doc. E/CN.4/Sub.4/1986/7/Add.4 (United Nations publication, Sales No. 86.XIV.3).

[8] See E/C.19/2005/2, section II, para. 13.

[9] World Bank, *Indigenous People and Poverty in Latin America: an Empirical Analysis*, Washington, 1994, pp. 206-207.

[10] World Bank, *Indigenous Peoples, Poverty and Human Development in Latin America: 1994-2004*, Washington, 2005.

[11] E/C.19/2003/4.

[12] Government of Guatemala, 2004 *Política Nacional de Seguridad Alimentaria y Nutricional* p. 8. See also the report of the Special Rapporteur on the right to food on Guatemala .

[13] S. Thériault, G.Otis, G. Duhaime and C. Furgal, "The legal protection of subsistence: prerequisite of food security for the Inuit of Alaska", *Alaska Law Review*, vol. 22, No. 1 (June 2005), p. 35.

[14] World Bank, *Guatemala: Livelihoods, Labor Markets, And Rural Poverty*, Guatemala Poverty Assessment (Guapa) Program, Technical Paper No. 1, 2003, p. 25.

[15] *The Mayagna (Sumo) Indigenous Community of Awas Tingni v. The Republic of Nicaragua*, Judgement Summary and Order of the Inter-American Court of Human Rights, issued 31 August 2001.

[16] See, on this subject, "Learning the lessons of traditional knowledge: broadening the base of intellectual property", *WIPO Magazine*, No. 1 (January-February 2004), pp. 14-17.

[17] See http://www.lifeinitiative.net/docs/PALissue1Nov04.pdf.

[18] http://www.ukabc.org/quinoa.htm.

[19] *Adong bin Kuwau v. State of Johor*.

[20] Plataforma Interamericana de Derechos Humanos, Democracia y Desarollo (PIDhDD), FIAN Brasil, *El Derecho Humano a la Alimentación en America Latina*, 2004. FIAN, *The Human Right to Food in Guatemala*, October 2004.

[21] For a fuller discussion of the draft declaration, see Julian Burger, "The Draft United Nations Declaration on the Rights of Indigenous Peoples" paper prepared for Workshop *International Human Rights Standard-Setting Processes*, International Council on Human Rights Policy and International Commission of Jurists, Geneva, 13-14 February 2005.

[22] E/CN.4/Sub.2/2001/10, para. 55.

[34] International Federation for Human Rights (IFHR), *Les politiques de la Banque Mondiale à l'épreuve des droits humains*, 2003. IFHR, *Understanding Global Trade and Human Rights*, 2005.

[35] 3D — Trade — Human Rights — Equitable Economy and FORUM-ASIA, *Practical Guide to the WTO for Human Rights Advocates*, 2004.

[36] HAN, *Questionable Advice, The Worldbank's Influence on Mining Laws in Africa — Human Rights Comments*, 2004.

[37] Skogly, S., *The Human Rights Obligations of the World Bank and the IMF*, London: Cavendish, 2001.

[38] Clapham, A., *Human Rights Obligations of Non-State Actors*, Oxford University Press, 2005.

[39] Darrow, M., *Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law*, Oxford, 2003.

[40] Ghazi, B., *The IMF, World Bank Group and the Question of Human Rights*, PhD dissertation Graduate Institute of International Studies, Geneva, May 2004.

[41] See its general comments Nos. 3, 12 and 15. See also the Committee's statement to the Third Ministerial Conference of the World Trade Organization in 1999 and its statement on Globalization and Economic, Social and Cultural Rights made in May 1998 (E/C.12/1999/9).

[42] See E/CN.4/Sub.2/2000/13, E/CN.4/Sub.2/2001/10, E/CN.4/Sub.2/2003/14.

[43] Some instances of violations are described in Bradlow, D. D. and Grossman, C. "Adjusting the Bretton Woods Institutions to Contemporary Realities" in Bernhard, G. and Griesgraber, J. M. (ed), *Development, New Paradigms and Principles for the 21st Century*, London, Pluto Press, pp. 27-59; see also Ghazi, B., 2004.

[44] Inspection Panel, *Investigation Report on India: Coal Sector Environmental and Social Mitigation Project (Credit No. 2862-In)*, November 2002.

[45] Ghazi, B. 2004 p.44 ff.

[46] IMF, "External evaluation of the ESAF (Enhanced Structural Adjustment Facility): report by a group of independent experts", June 1998.

[47] See for example http://www.oxfam.org.uk/what_we_do/issues/trade/bp72_rice.htm.

[48] http://www.maketradefair.com/en/index.php?file=03042002121618.htm.

[49] http://www.oxfam.org.uk/what_we_do/issues/trade/bn_doha.htm.

[50] Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion ICJ Reports 1980, pp. 89-90 para. 37.

[51] Understanding the WTO, Geneva: WTO Secretariat at www.wto.org, 27 June 2005.

[52] Schermers, H. G. and Blokker, N., *Law of International Organizations*, Fourth edition, 2003, pp. 992-993.

[53] Darrow, M., 2003, p. 192 and chapter IV.

[54] See for instance Gianviti, F., "Economic, Social and Cultural Rights and the International Monetary Fund", presented at a consultation convened by the Committee on Economic, Social and Cultural Rights and the High Council of International Cooperation of France, Geneva 7 May 2001 (unpublished paper); and Shihata, I., *The World Bank Inspection Panel*, 2nd edition, New York, Oxford University Press, p. 241.

[55] Declaration of the World Food Summit 1996, and "An International Alliance Against Hunger": Declaration of the World Food Summit: five years later, 2002. In both cases the United States of America formulated reservations to the recognition of the right to food as a legal right, but this only can make that country a persistent objector and does not preclude the formation of the right to food as a customary norm.

[45] Sands, P. and Klein, P. (ed), *Bowett's Law of International Institutions*, Fifth edition, 2004, p. 458-459; see also Clapham, A., 2005, Chapter V, Petersmann, E-U, *Time for Integrating Human Rights into the Law of Worldwide Organizations. Lessons from European Integration Law for Global Integration Law*, 2001, p. 5.

[46] For example Ghazi, B., 2004, pp. 108-109 and 206-213.

[47] Statement of the Committee on Economic, Social and Cultural Rights on Globalization and Economic, Social and Cultural Rights, 11 May 1998, para. 5. http://www.unhchr.ch/tbs/doc.nsf/0/0fad637e6f7a89d580256738003eef9a?Opendocument.

[48] Skogly, S., 2001, p. 151.